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The Legal 500 Country Comparative Guides

The Netherlands

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in The Netherlands.

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THE NETHERLANDS
LITIGATION

1. What are the main methods of resolving disputes in your jurisdiction?

The main methods of resolving commercial disputes in the Netherlands are state court litigation and arbitration. Other forms of ADR, such as mediation and adjudication (expert determination or binding advice), are available. It is not uncommon for parties to resolve commercial disputes in out-of-court settlements.

2. What are the main procedural rules governing litigation in your jurisdiction?

The main procedural rules governing commercial litigation in the Netherlands are laid down in the Dutch Code of Civil Procedure ('DCCP'). The DCCP is complemented by rules of procedure issued by the courts. These regulations contain practice rules and more practical guidance on the conduct of litigation.

International commercial disputes may, under certain conditions, be brought before the Netherlands Commercial Court ('NCC'). The NCC operates under Dutch procedural law complemented by the NCC Rules of Procedure. An English version of the NCC Rules of Procedure can be found at: https://www.rechtspraak.nl/English/NCC/Pages/rules.aspx . See also question 3.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

There are three levels of judicial instances in the Dutch civil court system, all of which are national courts, and all judges are appointees. There are 11 courts of first instance. Cases are generally handled by a single judge. More complex cases are often referred to a full-bench panel of three judges. The courts have a subdistrict law sector for small claims (less than EUR 25,000) and labour, tenancy, agency and consumer sales and consumer loan disputes. A party may file an appeal at one of the four appellate courts. Appeal cases are always dealt with by a full-bench panel of three judges. The Supreme Court ("Hoge Raad") is the final court of appeal. The Supreme Court generally consists of five judges and is a cassation court, which only deals with matters of law.

The Enterprise Chamber of the Amsterdam Court of Appeal ('Enterprise Court') is the court of first instance for disputes involving mismanagement and related corporate issues. It also serves as the appellate court in certain corporate litigation disputes. The Enterprise Court consists of a panel of five judges which includes three members of the judiciary and two lay persons with specialist expertise (e.g. accountants).

Since 2019, international commercial disputes may be brought before the NCC. The NCC is situated as separate chambers within the Amsterdam District Court and the Amsterdam Court of Appeal. The NCC is designed to meet the need for efficient dispute resolution of (complex) international commercial matters. The entire proceedings, including the judgments, are conducted in English before experienced judges. Appeals are lodged before the Netherlands Commercial Court of Appeals ('NCCA'). The NCC(A) may assume jurisdiction with regard to (i) civil or commercial cases within the parties' autonomy (ii) concerning an international dispute (iii) the Amsterdam District Court or the Amsterdam Court of Appeal having jurisdiction (iv) and the parties having expressly agreed in writing that proceedings shall be conducted in English before the NCC.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

Claims lodged in ordinary civil proceedings are initiated by a writ of summons (statement of claim). Subsequently, the defendant files a statement of defence within six weeks; this timeframe can be extended upon parties' joint request or by unilateral

request for compelling reasons. Dutch courts generally order an oral hearing after the first round of written submissions. An oral hearing is held to attempt an out-of-court settlement and/or to obtain additional information. In straightforward cases, such hearings take place within six to twelve months after proceedings are commenced. In more complex cases and/or when parties submit incidental motions, the timing may be different. In preliminary relief proceedings, hearings usually take place within a couple of days (in case of urgency) or weeks after commencement of proceedings. Provisional judgments in interim relief proceedings are usually obtained within days (in case of extreme urgency) or a couple of weeks.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

As a matter of principle, court hearings are held in public. Only under special circumstances may the court decide to conduct court hearings behind closed doors, for instance if this would be in the interest of public policy or public morality, in the interest of state security, when the interest of minors or privacy of parties so requires, or when the proper administration of justice would be prejudiced by a public hearing. A party may also request a non-public hearing when confidential business trade information is to be discussed. Court records, exhibits and other documents belonging to the case file are not disclosed to third parties (journalists sometimes inspect the docket register of summary proceedings).

6. What, if any, are the relevant limitation periods in your jurisdiction?

Unless otherwise provided by law, a claim becomes time-barred after 20 years. In many cases, Dutch law provides for shorter limitation periods, for example:

- the right to claim a specific performance of a contractual obligation to do or to give something becomes time-barred five years after the date on which the claim became eligible. (or two years in case of consumer sale);
- the right to claim damages or a contractual penalty becomes time-barred five years from the day after the injured party became aware of (a) the damage inflicted and (b) the identity and liability of the person liable;
- the right to nullify an agreement in case of deception or error becomes time-barred three years after discovery thereof; and
- the right to demand the annulment of a resolution of a constituent body of a legal entity becomes time-barred after one year following the publication or notification thereof.

Time limits are treated as a substantive law issue.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In principle, there are no pre-action conduct requirements in the Netherlands, although a notice of default will often be required in order to enforce one's rights with regard to breach of contract. Pre-trial correspondence is required in cases of mismanagement brought before the Enterprise Chamber of the Amsterdam Court of Appeal ("Ondernemingskamer") and collective actions. Failing to comply with these requirements can result in the claimant not having cause of action. Further, courts may be reluctant to award costs of litigation if the claimant starts litigation without first having communicated with the defendant on its position.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

There are two main types of civil proceedings in the Netherlands: proceedings initiated by summons ("dagvaarding"); or proceedings initiated by an application ("verzoekschrift"). The proceedings initiated by summons are used for ordinary civil suits, and proceedings initiated by application are used in disputes involving employment, leases, family, preliminary hearing of witnesses, attachments and certain corporate matters, including proceedings before the Enterprise Court.

The summons contains a statement of the facts, the claim(s) and the legal basis for the claim(s), the defences of the defendant which are known to the claimant and a list of the relevant evidence on which the claimant intends to rely. A bailiff serves the summons onto the defendant, thereby formally notifying the defendant of the lawsuit. Subsequently, the claimant must file the summons with the Court Registrar on the last business day prior to the date of formal court

appearance as stipulated in the summons (see also question 13).

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Dutch courts have international jurisdiction if there are legal provisions to this effect or if the parties have selected a Dutch court as the forum for hearing any disputes arising between them. Regulation (EU) No 1215/2012 ('Brussels I Recast') contains the most important set of rules regarding international jurisdiction. If no international treaty or European regulation (including Brussels I Recast) applies, the national rules laid down in the DCCP determine whether the Dutch courts have international jurisdiction and accordingly, whether a defendant can be made subject to a lawsuit in the Netherlands. These rules are very similar to the international jurisdiction rules of Brussels I Recast. The rules of international jurisdiction have a public policy nature. This means not only that the court must ex officio determine whether it has international jurisdiction, but also that the court must conduct its assessment regardless of whether it relies on facts other than those on which the parties based their claim or defence. The defendant that appears in court can lodge a motion to dismiss for lack of jurisdiction to prevent that the Dutch court accepts jurisdiction on the basis of a tacit choice of forum. This motion must be lodged prior to the statement of defence on the merits or ultimately together with the statement of defence.

10. How does the court determine which law governs the claims in your jurisdiction?

Dutch courts are obliged to apply the rules on conflict of laws ex officio. This means that, in a cross-border matter, it will have to apply the rules on conflict of laws, even though the parties have been silent about the question of applicable law. In contractual and tort matters, Dutch courts are bound to apply the Rome I and Rome II Regulations (i.e. Regulation (EC) No 593/2008 and Regulation (EC) No 864/2007, respectively). If, in general, the case at hand falls outside the scope of Rome I and Rome II and no other convention applies, the provisions of the Rome I and Rome II Regulations are declared analogously applicable by Dutch domestic rules on conflict of laws.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

There are a several circumstances in which claims are disposed of without a full trial. Parties may settle their disputes amicably, in whole or in part, during the proceedings. There is an increasing degree of case management by judges, on the grounds of efficiency and to explore whether, e.g., with the aid of an out-of-court settlement, the parties can be dissuaded from continuing legal proceedings.

A settlement reached during a hearing may be recorded in an enforceable court record. A judgment by default may be rendered when the defendant does not appear in court. The court will in principle award the claim, unless the court considers the claim to be prima facie unlawful or unfounded. It is not possible to apply for a substantive (partial) ruling prior to the actual proceedings. It is possible, however, to request the court by a hearing (which can be ordered at every stage of the proceedings) or by a procedural motion, to first render a decision regarding preliminary issues such as the competence of the court, applicable law or limitation periods, before dealing with the merits of the case. This may result into a premature end of the proceedings, or parts thereof. The court may dismiss claims, without a full trial, if it appears that the statement of claim discloses no reasonable grounds for bringing the claim or is an abuse of procedural law.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

An interim relief judge may order any type of interim relief a party requires in urgent matters. Interim relief may be requested pending proceedings on the merits or before such proceedings are initiated. Although interim relief is of a provisional nature, proceedings on the merits may not be necessary after a decision in preliminary relief proceedings has been rendered. Examples of interim remedies are: protective measures, such as a prejudgment attachment; orders to do or abstain from doing something at a penalty; and the order to produce documents. In case of a prejudgment attachment, proceedings on the merits must be initiated within two weeks after the attachment was made, if no such proceedings were already pending.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

In ordinary standard commercial proceedings, the defendant is granted a period of six weeks to submit a statement of defence, after the writ if summons is registered with the court registrar, and a lawyer has presented itself to the court as the defendant's counsel. Extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons (including cases of force majeure). In subdistrict sector cases, a term of four weeks to file a statement of defence is granted to the defendant. A first extension of four weeks is granted upon the request of the defendant. The statement of defence may include a counterclaim. If an oral hearing is ordered, a statement of defence in counterclaim may be submitted prior to the hearing. The court decides when such statement is to be submitted. Incidental motions, often with regard to procedural issues, may also be raised in the statement of defence, prior to all other (substantive) defences. Examples are motions to inspect documents or copies thereof, thirdparty (impleader) claims, requests for joinder and intervention, and the provision of security for litigation costs. Some motions, e.g., motions contesting jurisdiction, may be raised in a separate submission, instead of in the statement of defence. The court may decide that an incidental motion is dealt with prior to handling the case on the merits. This is assessed in accordance with the nature and the contents of the claim, the interests of the parties and the interest of an efficient litigation process. In principle, the claimant is granted a two-week period to submit a written reply to an incidental motion. Two-week extensions may be granted with the other party's consent or by the court for compelling reasons. Particularly in more complex disputes, the court may decide on further written submissions instead of or after an oral hearing. In that case, the claimant is granted a six-week period to file a statement of reply. Extensions of six weeks may be granted with the other party's consent or by the court for compelling reasons. The defendant is subsequently allowed to submit a statement of rejoinder. The same timetable applies. To the extent the court deems this necessary, the court may allow the parties to file further submissions. In multi-party complex litigation cases, often parties themselves negotiate timetables, structuring procedural statements and timing of submission, to be approved by the court (case-management).

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

There are no discovery or disclosure procedures comparable to common law systems in the Dutch judicial systems. There are, however, instruments available for obtaining information / documents from third parties. Interested parties may request inspection of (or copies or extracts from) documents, including electronic documents, from those who have these documents at their disposal. This action may be instituted in summary or ordinary proceedings, as an interim action in ongoing proceedings, or by application (e.g., combined with an application to order a provisional examination of witnesses). A request can be granted provided: (i) the requesting party has a legitimate interest in obtaining the information; (ii) the existence of the requested specific documents has been established to a sufficient extent (in order to prevent fishing expeditions); and (iii) the records concern a legal relationship to which the requesting party is a party. The rules on disclosure of documents acknowledge professional privilege. A request for inspection of documents may be refused on the ground of serious reasons, which may for instance apply to certain confidential information, medical data or sensitive financial information. Whether a request for inspection is denied based on such serious reason, will be determined by a judge on a case-by-case basis, with due consideration of all interests involved . A request may further be refused if the proper administration of justice is also guaranteed without the requested information. This current regime for exhibition claims may be amended as a bill proposing the modernisation of law of evidence is pending (as described in more detail under question 15 below). In addition to this potential amendment, the bill introduces a pre-trial information gathering duty meaning that the parties will be required to collect and submit any information that they "reasonably" have at their disposal and that, in the given circumstances, can "reasonably be expected" to be relevant for the court's decision.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witness evidence is fairly common in litigation, although documentary evidence is often (far) more reliable. Most of the time, witness statements are given orally. It is becoming more and more common for witnesses to submit a written statement. An (oral) witness testimony of a party testifying on its own behalf is only accorded very limited evidentiary force; it needs to be substantiated with supplementary evidence (which is, as part of modernisation of law of evidence, under review).

Cross-examination does not exist in Dutch litigation. The court is in charge of the examination of the witness. In practice, the court usually allows the parties and is obligated (upon request) to allow their counsel to put additional questions directly to the witness, subject to the condition that the questions are limited to the evidential issue upon which the witness is examined. Witnesses have a duty to appear and render their truthful testimony. Witnesses may, however, refuse to testify in court on personal grounds as well as for factual reasons, e.g., in cases where their testimony could entail prosecution for a criminal offence or disclose technical or trade secrets. A revised draft legislative bill for the modernisation of the law of evidence ("Wet vereenvoudiging en modernisering bewijsrecht") is currently pending. This proposal aims to simplify the obtaining of relevant information and evidence both during and prior to civil proceedings and to establish a form of dispute resolution that leads to more effective solutions and earlier settlement of disputes. Amongst other important changes (see question 14), the proposal provides that all applications for preliminary evidence (such as an application for preliminary examination of witnesses or a provisional expert opinion) must be bundled together prior to trial. Further, the bill allows the courts to summon a witness who has not been put forward by the parties. It is not clear if and when this proposal will be adopted and in what form (also given that the bill has been criticised by both practitioners and scholars). Depositions are not admitted in Dutch commercial litigation.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

In the Dutch jurisdiction expert evidence is permitted and widely used. For example, parties often engage experts to calculate damages. Expert evidence may be furnished by submitting written expert evidence by one of the litigants or by having an expert examined as a witness. There are no specific rules regarding concurrent expert evidence. Parties are free to instruct their own party-appointed expert and they usually affect the expert's report. The opposing party may produce their own party-appointed expert report to contest the findings of the other expert. The court may, at the request of the parties or ex officio, order an (independent) expert to provide an expert report or to be heard. A court appointed expert has the duty to fulfil his appointment impartially and to the best of his abilities. He must allow parties to comment on the draft report and to make requests. The comments and requests have to be included in the report. The report needs to be reasoned. Parties have the duty to cooperate with the investigation of the expert. The court is free to assess the expert report(s). It is our experience that Dutch courts rely heavily on expert reports (also partisan expert reports), especially when they concern issues that require specific knowledge which a court lacks (e.g., technical features of certain products, complex financial products or business practices in certain industries).

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Almost all final decisions of the district court can be appealed at the court of appeal. An appeal must be lodged within three months from the day the decision was rendered. Shorter appeal periods exist for certain cases; for instance a four-week appeal period applies for interim relief judgments. Objections against interim decisions that do not contain final decisions must be included in the appeal against the final judgment, unless the court grants permission to lodge an interim appeal against the interim judgment. Appeal in cassation can be lodged with the Supreme Court against most decisions of the court of appeals. Decisions of the Enterprise Chamber can only be appealed with the Supreme Court. Appeal in cassation must also be filed within three months from the day the decision was rendered.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

In civil and commercial matters, the rules regarding recognition and enforcement of judgments from EU Member States (except for Denmark) in the Netherlands are laid down by Brussels I Recast and some other EU regulations. Brussels I Recast provides for enforcement without any special procedure being required. If there is a convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, permission of the court must be obtained first. Upon request for an exequatur the court does not investigate the case itself, but verifies whether all formalities – including, but not limited to, the review criteria of the applicable convention regulations – have been observed. The exequatur proceedings may be overruled by special convention or statutory regulations. If there is no convention pursuant to which the foreign decision qualifies for enforcement in the Netherlands, such decision cannot be enforced in the Netherlands, even if it is susceptible of being recognised in the Netherlands. In

that case, new proceedings shall have to be initiated before a Dutch court in order to obtain a judgment that is eligible for enforcement in the Netherlands. In practice, however, the Dutch court will not review the case on the merits again. If the foreign decision meets four recognition conditions developed in Dutch case law, the Dutch courts will generally follow the foreign decision.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The unsuccessful party is usually ordered to cover the litigation costs of the prevailing party. This includes court registration fees, witness and expert fees and legal fees. Legal fees are based on fixed amounts for certain standard activities (such as submitting a written statement, attending an oral hearing or imposing a prejudgment attachment), but are also contingent on the value of the claim. The actual costs and lawyer's fees are seldom covered by the amount awarded. Recovery of the remaining costs from the losing party is only possible in case of a frivolous suit and – under certain conditions – in cases concerning intellectual property, where the prevailing party can be awarded full costs, including lawyer's fees.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

Dutch procedural law provides for two specific options for collective redress actions. Injured parties can bundle their claims by giving one person (which can also be an ad hoc foundation or association) a power of attorney or exclusive mandate to act on behalf of all of them or by assignment of their claims to this one person; alternatively, they can initiate a collective action based on section 3:305a Dutch Civil Code ('DCC').

The section 3:305a DCC route enables a foundation or association with full legal capacity (a claim vehicle) to institute an action aimed at protecting similar interests of other individual persons to the extent that the promotion of these interests is set down in its articles of association. The interests of those – both Dutch and foreign – individuals should be of such a nature that they are capable of being bundled, thus expediting the efficient and effective legal protection of the interested parties. Until recently, section 3:305a DCC only allowed for a declaratory judgment determining that the defendant has breached his duties or committed a wrongful act against the injured parties. On 1 January 2020, new legislation entered into force, introducing the possibility for injured parties to claim damages in this kind of collective action. This legislation further includes (i) the introduction of stricter admissibility requirements for representative entities (e.g. governance, funding and representation requirements); (ii) the appointment of an exclusive representative for all claimants (in case of various representative parties); and (iii) a binding judgement on all Dutch residents in a class, with the exception of those having opted out. With regard to the third point the opposite goes for non-Dutch residents: foreign claimants can voluntarily consent to their interests having been represented by the class action (i.e. opt in). Alternatively, the court can order that the opt out system applies to a precisely specified group of non-Dutch residents anyhow.

Dutch law also provides for court certification of damages in mass claim settlements (the Collective Mass Claims Settlement Act, 'WCAM'). The WCAM enables collective interest groups to have an agreement that was concluded with another party (the party causing the loss), declared generally binding at the Amsterdam Court of Appeal in cases of large-scale loss. This (published) generally binding declaration consequently binds the entire group of injured parties, both in the Netherlands and abroad, and accordingly enables a settlement with an undetermined number of injured parties. The WCAM provides for a so-called opt-out option. This gives individual injured parties the option to withdraw (by written declaration, within a certain court-determined period) from the order declaring a collective agreement binding. The Dutch WCAM proceedings can be and have been used for global settlements with relatively little connection to the Netherlands. The possibility to claim damages in collective action, is likely to put increased pressure to settlement claims. It is expected to have a significant impact on the litigation climate in the Netherlands (and possibly the rest of Europe).

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

A third party who has an interest in the ongoing proceedings may apply for permission to join the lawsuit or to intervene in it. In a joinder, the interested third party supports the position of one of the parties or may opt to take its own position. In the case of an intervention, the interested third party submits a claim on its own account. Proceedings between the same parties can be joined (consolidated) if they are about the

same subject matter. The same applies in the event of a close connection between proceedings, whether or not the same parties are involved. For consolidation, the proceedings need to be pending before the same court. If different courts are involved, the case may be referred to the other court. Such request for reference may be succeeded by a request for consolidation. By impleader, a third party may be summoned by one of the parties to ongoing proceedings in third-party proceedings. Although the main proceedings and the third-party proceedings remain separate proceedings, they are generally dealt with concurrently.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Litigation funding by third parties is permitted in the Netherlands, except for funding by law firms. Common law obstacles such as 'maintenance' and 'champerty' do not arise. Third-party litigation funding is gaining in popularity in the Netherlands. Litigation funding is becoming increasingly common in multi-claimant disputes, such as class actions, cartel damages claims and securities litigation, commercial claims and bankruptcy claims from receivers. In the Netherlands, third party-funding is in essence not regulated as of yet. In view of increasing collective or multi-claimant disputes, instigated with use of funding, it may be expected the courts will look at and demand transparency as to, among other things, the nature of the underlying funding relationship and the amount of profit the funder stands to make. Therefore, the way in which a litigation is funded, may affect the admissibility of a claim or the enforceability of a settlement. There is no legal statute that would require the third-party funders to reimburse the other party in case the funded party loses the trial. However, the funding agreement typically obliges the funder to cover the party's litigation costs to the extent that the court has imposed them upon that party (including fixed amounts for lawyers' fees; bailiff fees; court fees; costs of expert witnesses; and possible orders for costs). The actual costs and attorney fees incurred by the prevailing party are seldom covered by the amount awarded, and recovery of the remaining costs of the losing party is usually not possible (ref. question 19).

Lawyers in the Netherlands are prohibited under the Rules of Professional Conduct from providing a "no win no fee" service, with the exception of a pilot in personal injury cases. Alternative fee arrangements that are in part dependent on the outcome of the case (such as basic fee and success fee) are permitted with certain restrictions.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

As of the COVID-19 pandemic, under circumstances (i.e. larger cases or cross border matters, with foreign parties,) and upon request, courts facilitate (foreign) parties to join hearings that are held in court rooms, by video screen. Through live streaming facilities, interested other parties, including press, can attend court hearings as well.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The Dutch jurisdiction is an attractive location to litigate, due to various reasons. The Netherlands is the seat of many multinational corporations and a main port of entrance to continental Europe. Simply due to domicile or residence by the defendant, collective action plaintiff parties can often create jurisdiction for the Dutch courts (e.g., see section 4 of Brussel I Recast). International benchmark studies show that the Dutch judiciary is generally considered professional, predictable, honest, efficient and fast, making it an attractive venue for both plaintiff and defendant. Litigation in the Netherlands is relatively inexpensive, due in part to low rates of compensation for the costs of litigation the losing party must pay. The Dutch legislator deliberately promotes the Netherlands as a forum for resolving international disputes. A relatively recent example is the start of the NCC early 2019 (see questions 2 and 3). The NCC consists of specialised judges and the proceedings, with a quick throughput time, are conducted in English. The NCC District Court and Court of Appeal are both set up in Amsterdam. Another example is the introduction of the new legislation on collective redresss action, as further explained under question 20, enabling fairly easy access for aggrieved parties to claim damages.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Legal developments have encouraged law firms and litigation funders to become more adapt at gathering and funding groups of claimants. Also in light of the new legislation regarding redress of mass damages in a

collective action, we expect this practice to increase, in a rather exponential way. The NCC expects to play a role in class actions, facilitating both in court and out-of-court settlements. In particular, we note a significant rise in the volume of mass claims relating to privacy breaches, investor related disputes, securities litigation and cartel follow-on damages. We expect that, in the future, this legislation will also be used more and more often to bring Environmental, Social and Governance (ESG) related litigation.

In addition, we expect ESG related litigation, also non-class action cases, to continue growing in the coming years. Claimants may attempt to rely on successful outcomes in previous ESG litigation in the Netherlands, most notably the Milieudefensie v. Shell case and Urgenda v. the Dutch State case. Legislative developments with respect to ESG litigation, at both the European and national level, may also play an important role, particularly the EU Corporate Sustainability Reporting Directive (CSRD), the draft EU Corporate Sustainability Due Diligence Directive (CSDDD), the draft Dutch Act on International Corporate Social Responsibility and the revised Dutch Corporate Governance Code.

The CSRD entered into force on 5 January 2023. It requires in-scope companies to adhere to new reporting rules regarding social and environmental information starting from the 2024 financial year (i.e. reports to be published in 2025). By establishing clear reporting obligations, the Directive contributes to the overall transparency and accountability of companies, making it easier for affected parties to identify potential breaches and gather evidence for litigation purposes.

The CSDDD sets forth rules for in-scope companies to conduct thorough due diligence processes on human rights violations and environmental damage with respect to their own operations, those of their subsidiaries, and their global value chain operations, and provides for rules on liability for violations of these obligations. In addition, a revised Dutch bill on responsible and sustainable international business ("Wet verantwoord en duurzaam internationaal ondernemen"), which includes rules similar to the CSDDD but goes further in some respects, is also pending.

In addition, the revised version of the Dutch Corporate Governance Code ("Code"), which applies to Dutch listed companies on a 'comply-or-explain' basis, became effective as of 1 January 2023. The updated Code implies that the board of directors of a Dutch listed company is responsible for creating long-term value in a sustainable manner, taking into account the consequences of the company's activities on people and the environment.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

A digital litigation pilot for claim procedures, introduced in 2017, appeared not successful. An emergency act ("Spoedwet KEI") entered into force on 1 October 2019, revoking the pilot. It is expected that digital litigation will be introduced (in a simplified form) shortly. Digital litigation has been implemented for litigation at the Supreme Court and the NCC successfully. eNCC, an electronic communication system, allows Dutch counsel to initiate actions, check the status and scheduled next steps, and submit and download documents. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

Although the COVID-19 Emergency Act has expired, which act allowed courts to facilitate, amongst other things, digital court hearings and the electronic submission of court documents, under circumstances and upon request, digital hearings and electronic document submission are to some extent still possible. More general, technology is likely to have a lasting impact on various aspects of commercial litigation in the next years. Sophisticated intelligent research tools allow practitioners to analyse vast quantities of data in a timely and cost efficient manner. We expect that automated processes will enhance lawyers to focus on clients' specific needs, adding value to available technology.

Furthermore, the widespread adoption of new technologies, like artificial intelligence and machine learning, is also likely to give rise to legal disputes. These disputes may encompass questions regarding accountability for the actions of software and the ownership of intellectual property rights related to inventions generated by software.

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